

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0240

Reversed
Late Request for Hearing Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On September 28, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was therefore disqualified from receiving unemployment insurance benefits effective July 28, 2019 (decision # 80417). On October 19, 2020, decision # 80417 became final without claimant having filed a request for hearing. On February 9, 2021, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on March 2, 2021 issued Order No. 21-UI-161877, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by March 16, 2021. On March 8, 2021, claimant filed a timely response to the appellant questionnaire. On April 15, 2021, the Office of Administrative Hearings (OAH) mailed a letter to the parties stating that Order No. 21-UI-161877 was vacated and that a hearing would be scheduled to consider whether claimant's late request for hearing should be allowed and, if so, the merits of decision # 80417. On February 3, 2022, ALJ Frank conducted a hearing and issued Order No. 22-UI-186120, re-dismissing claimant's request for hearing as late without good cause and leaving decision # 80417 undisturbed. On February 12, 2022, claimant filed an application for review of Order No. 22-UI-186120 with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB did not consider claimant's written argument when reaching this decision because he did not include a statement declaring that he provided a copy of his argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019).

FINDINGS OF FACT: (1) On September 28, 2020, the Department mailed decision # 80417 to claimant's address of record at that time. Decision # 80417 stated, "You have the right to appeal this

decision if you do not believe it is correct. Your request for appeal must be received not later than October 19, 2020.” Exhibit 1.

(2) Claimant is a person with Down syndrome. In 2020, claimant was living with his mother and father, and claimant’s mother was assisting him with his unemployment benefits claim. Claimant’s father knew claimant’s mother was handling claimant’s claim. Claimant’s mother did not request a hearing for claimant on decision # 80417.

(3) In late 2020, claimant began living with his father as his primary caretaker. At that time, claimant’s father assumed responsibility of claimant’s benefits claim. Claimant’s father knew claimant disagreed with decision # 80417. On February 9, 2021, claimant’s father requested a hearing on decision # 80417 on claimant’s behalf.

CONCLUSIONS AND REASONS: Claimant’s late request for hearing on decision # 80417 is allowed. Claimant is entitled to a hearing on the merits of that decision.

ORS 657.269 provides that the Department’s decisions become final unless a party files a request for hearing within 20 days after the date the decision is mailed. ORS 657.875 provides that the 20-day deadline may be extended a “reasonable time” upon a showing of “good cause.” OAR 471-040-0010 (February 10, 2012) provides that “good cause” includes factors beyond an applicant’s reasonable control or an excusable mistake, and defines “reasonable time” as seven days after those factors ceased to exist.

The request for hearing on decision # 80417 was due by October 19, 2020. Because claimant did not file his request for hearing until February 9, 2021, the request was late. Order No. 22-UI-186120 concluded that claimant could not meet his burden to show good cause for filing his request for hearing late because claimant’s father did not know whether claimant’s mother received or responded to decision # 80417 after it was mailed to claimant’s address. Order No. 22-UI-186120 at 3. The record does not support this conclusion.

Claimant is a person with Down syndrome and at the time decision # 80417 was issued, claimant’s mother was handling claimant’s unemployment benefits claim. Because claimant and his father both allowed claimant’s mother to handle claimant’s benefits claim, it is reasonable to presume that claimant reasonably relied on his mother to do what was in claimant’s best interest regarding his claim. The record shows that claimant disagreed with decision # 80417. Therefore it follows that it was in claimant’s best interest to request a hearing on decision # 80417 in a timely manner. However, claimant’s mother did not do so. In late 2020, claimant began living with his father. Claimant’s father assumed the role of assisting claimant with his unemployment benefits claim. Because claimant’s father was acting as claimant’s primary caretaker at that time, it was reasonable for claimant to rely on his father to assist him with his claim. Claimant’s father knew claimant disagreed with decision # 80417 and requested a hearing for claimant on February 9, 2021. The record shows that claimant’s failure to file a timely request for hearing was due to an excusable mistake. The excusable mistake was claimant’s reliance on his parents to file a hearing request for him in a timely manner. Claimant reasonably relied on his parents to file a hearing for him, but they did not do so in a timely manner. The excusable mistake that prevented claimant filing a timely hearing request ceased to exist on February 9, 2021, when

claimant's father requested a hearing for him. The hearing was, therefore, requested within a reasonable time.

For the above reasons, claimant had good cause for failing to file a timely request for hearing, and filed his late request for hearing within a reasonable time. Therefore, claimant's late request for hearing on decision # 80417 is allowed, and claimant is entitled to a hearing on the merits of that decision.

DECISION: Order No. 22-UI-186120 is set aside, and this matter remanded for further proceedings consistent with this order.

D. Hettle and A. Steger-Bentz;
S. Alba, not participating.

DATE of Service: March 21, 2022

NOTE: You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310 or visit the Court of Appeals website at courts.oregon.gov. Once on the website, use the 'search' function to search for 'petition for judicial review employment appeals board'. A link to the forms and information will be among the search results.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



Understanding Your Employment Appeals Board Decision

English

Attention – This decision affects your unemployment benefits. If you do not understand this decision, contact the Employment Appeals Board immediately. If you do not agree with this decision, you may file a Petition for Judicial Review with the Oregon Court of Appeals following the instructions written at the end of the decision.

Simplified Chinese

注意 – 本判決會影響您的失業救濟金。如果您不明白本判決，請立即聯繫就業上訴委員會。如果您不同意此判決，您可以按照該判決結尾所寫的說明，向俄勒岡州上訴法院提出司法複審申請。

Traditional Chinese

注意 – 本判決會影響您的失業救濟金。如果您不明白本判決，請立即聯繫就業上訴委員會。如果您不同意此判決，您可以按照該判決結尾所寫的說明，向俄勒岡州上訴法院提出司法複審申請。

Tagalog

Paalala – Nakakaapekto ang desisyong ito sa iyong mga benepisyo sa pagkawala ng trabaho. Kung hindi mo naiintindihan ang desisyong ito, makipag-ugnayan kaagad sa Lupon ng mga Apela sa Trabaho (Employment Appeals Board). Kung hindi ka sumasang-ayon sa desisyong ito, maaari kang maghain ng isang Petisyon sa Pagsusuri ng Hukuman (Petition for Judicial Review) sa Hukuman sa Paghahabol (Court of Appeals) ng Oregon na sinusunod ang mga tagubilin na nakasulat sa dulo ng desisyon.

Vietnamese

Chú ý - Quyết định này ảnh hưởng đến trợ cấp thất nghiệp của quý vị. Nếu quý vị không hiểu quyết định này, hãy liên lạc với Ban Kháng Cáo Việc Làm ngay lập tức. Nếu quý vị không đồng ý với quyết định này, quý vị có thể nộp Đơn Xin Tái Xét Tư Pháp với Tòa Kháng Cáo Oregon theo các hướng dẫn được viết ra ở cuối quyết định này.

Spanish

Atención – Esta decisión afecta sus beneficios de desempleo. Si no entiende esta decisión, comuníquese inmediatamente con la Junta de Apelaciones de Empleo. Si no está de acuerdo con esta decisión, puede presentar una Aplicación de Revisión Judicial ante el Tribunal de Apelaciones de Oregon siguiendo las instrucciones escritas al final de la decisión.

Russian

Внимание – Данное решение влияет на ваше пособие по безработице. Если решение Вам непонятно – немедленно обратитесь в Апелляционный Комитет по Трудоустройству. Если Вы не согласны с принятым решением, вы можете подать Ходатайство о Пересмотре Судебного Решения в Апелляционный Суд штата Орегон, следуя инструкциям, описанным в конце решения.

Khmer

ចំណុចសំខាន់ – សេចក្តីសម្រេចនេះមានផលប៉ះពាល់ដល់អត្ថប្រយោជន៍គ្មានការងារធ្វើរបស់លោកអ្នក។ ប្រសិនបើលោកអ្នកមិនយល់អំពីសេចក្តីសម្រេចនេះ សូមទាក់ទងគណៈកម្មការឧទ្ធរណ៍ការងារភ្លាមៗ។ ប្រសិនបើលោកអ្នកមិនយល់ស្របចំពោះសេចក្តីសម្រេចនេះទេ លោកអ្នកអាចដាក់ពាក្យប្តឹងសុំឲ្យមានការពិនិត្យរឿងក្តីឡើងវិញជាមួយតុលាការឧទ្ធរណ៍រដ្ឋ Oregon ដោយអនុវត្តតាមសេចក្តីណែនាំដែលសរសេរនៅខាងចុងបញ្ចប់នៃសេចក្តីសម្រេចនេះ។

Laotian

ເອົາໃຈໃສ່ – ຄຳຕັດສິນນີ້ມີຜົນກະທົບຕໍ່ກັບເງິນຊ່ວຍເຫຼືອການຫວ່າງງານຂອງທ່ານ. ຖ້າທ່ານບໍ່ເຂົ້າໃຈຄຳຕັດສິນນີ້, ກະລຸນາຕິດຕໍ່ຫາຄະນະກຳມະການອຸທອນການຈ້າງງານໃນທັນທີ. ຖ້າທ່ານບໍ່ເຫັນດີນຳຄຳຕັດສິນນີ້, ທ່ານສາມາດຍື່ນຄຳຮ້ອງຂໍການທົບທວນຄຳຕັດສິນນຳສານອຸທອນລັດ Oregon ໄດ້ ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄຳຕັດສິນນີ້.

Arabic

هذا القرار قد يؤثر على منحة البطالة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فوراً، و إذا كنت لا توافق على هذا القرار، يمكنك رفع شكوى للمراجعة القانونية بمحكمة الاستئناف بأوريغون و ذلك بإتباع الإرشادات المدرجة أسفل القرار.

Farsi

توجه - این حکم بر مزایای بیکاری شما تاثیر می گذارد. اگر با این تصمیم موافق نیستید، بلافاصله با هیأت فرجام خواهی استخدام تماس بگیرید. اگر از این حکم رضایت ندارید، می‌توانید با استفاده از دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
www.Oregon.gov/Employ/eab

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.